



California Regional Water Quality Control Board

San Diego Region



Terry Tamminen
Secretary for
Environmental
Protection

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.swrcb.ca.gov/rwqcb9>

Arnold Schwarzenegger
Governor

November 18, 2004

CERTIFIED-RETURN RECEIPT REQUESTED
7004 0750 0001 2691 3386

Angela Merrill
Gaslamp Phase One LLC
425 West Beech Street, Unit 108
San Diego, California 92101

In Reply Refer to:
CA:14-1046.02:melbf

Dear Ms. Merrill:

Complaint No. R9-2004-0425 for Administrative Civil Liability for Mandatory Minimum Penalties Under California Water Code Section 13385, Violation of Order No. 2000-90, NPDES No. CAG919001

California Regional Water Quality Control Board, San Diego Region (Regional Board) records indicate that as an enrollee in the Regional Board's Order No. 2000-90, *NPDES No. CAG919001, General Waste Discharge Requirements For Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*, Gaslamp Phase One LLC (Gaslamp) discharges extracted groundwater to San Diego Bay. Gaslamp enrolled for regulation under these requirements in December 2002 (WDID No. 9 000001046) and discharges from the Gaslamp Square Project site located at 402 Fifth Avenue, San Diego, California.

Monitoring reports submitted by Gaslamp indicated that groundwater discharged from this site exceeded the following effluent limitation:

| Date of Violation | Violation | Permitted Limit $\mu\text{g/l}$ | Reported Value $\mu\text{g/l}$ | Percent Exceeded |
|-------------------|-------------|------------------------------------|-----------------------------------|------------------|
| June 16, 2004 | Tributyltin | 30-Day Avg. 0.005 | 0.0611 | >20% |

Mandatory Minimum Penalties

Provisions of Water Code Sections 13385(h)(1) require that mandatory minimum penalties be imposed whenever a person violates effluent limitations contained in a waste discharge requirement. In this case, the amount of the mandatory minimum penalty that must be assessed for the tributyltin violation on June 16, 2004 is \$3,000. The mandatory minimum penalty is further described in the enclosed Complaint No. R9-2004-0425, *Administrative Civil Liability with Mandatory Minimum Penalties*.

November 18, 2004

Please notify this office by November 29, 2004 if you have any information that disputes the validity of this violation or if you can demonstrate the violation is exempt from mandatory penalties per exemption criteria contained in Water Code section 13385(j).

Waiver of Right to Hearing

Gaslamp has the option to waive its right to a hearing. Waiver of the hearing constitutes admission of the validity of the allegation of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$3,000 as set forth in the Complaint. Be aware that if Gaslamp intends to waive its right to a hearing before the Regional Board, you or an authorized agent are required to:

1. Sign and return the enclosed waiver form with a cashier's check for the amount of civil liability indicated in the Complaint by 5:00 p.m., Wednesday December 15, 2004.
2. Publish the enclosed public notice in a newspaper circulated in the San Diego area no later than December 14, 2004. Verification that the notice has been published must be submitted to the Regional Board no later than December 15, 2004.

Public Hearing

If Gaslamp does not elect to waive its right to a public hearing, a public hearing on this matter will be held before the Regional Board at its tentatively scheduled meeting on February 9, 2005, at the Regional Board Meeting Room, 9174 Sky Park Court, San Diego, California. At the hearing, the Regional Board will determine the validity of the allegation and, if the allegation is found to be true, will consider whether to assess civil liability in the amount proposed by the Complaint, or in some other amount, provided that, for violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to navigable waters, mandatory minimum penalties prescribed in subdivisions (h) and (i) of Section 13385 of the California Water Code will be applicable.

The *Submittal of Written Information Procedures* describing the written materials and prescribed submittal dates required by the Regional Board and *Hearing Procedures* for the public hearing will be mailed to you not less than 30 days before the hearing date. Further, an agenda for the hearing will be mailed to you approximately 10 days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence to the Regional Board pertaining to this matter.

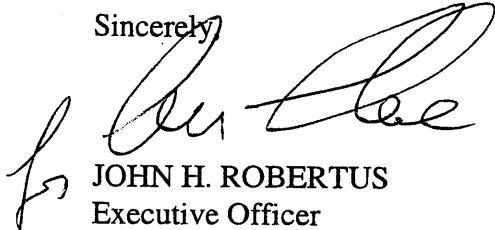
Ms. Angela Merrill
Gaslamp Phase One LLC
Complaint No. R9-2004-0425

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November 18, 2004

If you have any questions please contact Frank Melbourn at (858) 467-2973 or
fmelbourn@waterboards.ca.gov

Sincerely,



JOHN H. ROBERTUS
Executive Officer

ALC:mpm:mja:ftm

Enclosures: 1. ACL Complaint No. R9-2004-0425
2. Waiver of Hearing Form
3. Newspaper Notice of Waiver of Public Hearing

cc: John Phillips, Regional Board

WDID No. 9 000001046

For Internal Use Only

| V | ID No. | E | ID No. |
|---|--------|---|--------|
| | 179721 | | 95412 |

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

**GASLAMP PHASE ONE LLC
GASLAMP SQUARE
425 WEST BEECH STREET, UNIT 108
SAN DIEGO, CALIFORNIA 92101**

WDID NO. 9 000001046

**NONCOMPLIANCE WITH ORDER NO.
2000-90, NPDES NO. CAG919001, GENERAL
WASTE DISCHARGE REQUIREMENTS FOR
TEMPORARY GROUNDWATER EXTRACTION
& SIMILAR WASTE DISCHARGES TO SAN
DIEGO BAY & STORM DRAINS OR OTHER
CONVEYANCE SYSTEMS TRIBUTARY
THERE TO**

COMPLAINT NO. R9-2004-0425

FOR

ADMINISTRATIVE CIVIL LIABILITY

WITH

MANDATORY MINIMUM PENALTIES

November 18, 2004

GASLAMP PHASE ONE LLC IS HEREBY GIVEN NOTICE THAT:

1. Gaslamp Phase One LLC (Gaslamp) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, Water Code section 13385 et seq. The violation alleged herein is for violation of an effluent limitation in waste discharge requirements for discharges of pollutants from point sources to navigable waters for which the Regional Board must impose mandatory minimum penalties.
2. Gaslamp discharges extracted groundwater from the Gaslamp Square project, which is subject to waste discharge requirements, including numeric effluent limits, contained in Order No. 2000-90, *NPDES No. CAG919001, General Waste Discharge Requirements For Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. Gaslamp enrolled for regulation under these requirements in December 2002 (WDID No. 9 000001046).

ALLEGATIONS

3. On June 16, 2004 the concentration of Tributyltin (a Group II pollutant) in Gaslamp's discharge was 0.0611 $\mu\text{g/l}$, which exceeded the applicable effluent limitation (0.005 $\mu\text{g/L}$) by 20% or more.
4. This effluent limitation violation is a "serious" violation under subdivision (h)(2) of Section 13385.

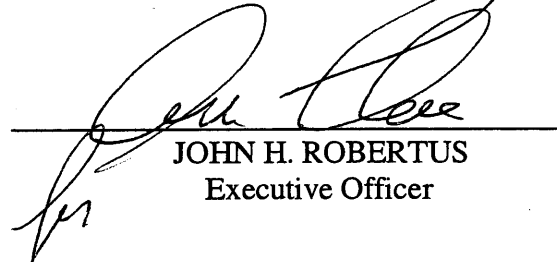
November 18, 2004

5. Under subdivision 13385(h)(1) of the California Water Code, the Regional Board must impose a mandatory minimum penalty of \$3,000 for the alleged violation of effluent limitations, for a total mandatory minimum penalty of \$3,000.

PROPOSED CIVIL LIABILITY

6. Pursuant to Section 13385(h) of the California Water Code, the Regional Board must impose mandatory minimum penalties of \$3,000 on Gaslamp Phase One LLC. No additional civil liability for the violation alleged in this Complaint is recommended.

Dated this 18th day of November 2004.



JOHN H. ROBERTUS
Executive Officer



California Regional Water Quality Control Board

San Diego Region

Terry Tamminen
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

WAIVER OF RIGHT TO A HEARING

Ms. Angela Merrill
Gaslamp Phase One LLC
425 West Beech Street, Unit 108
San Diego, California 92101

Administrative Civil Liability
with
Mandatory Minimum Penalties
Complaint No. R9-2004-0425
\$3,000
November 18, 2004

WDID No. 9 000001046
Gaslamp Square Project

By signing below, I agree to waive Gaslamp Phase One LLC's right to a hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violation alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up Gaslamp Phase One LLC's right to be heard, and to argue against the allegation made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Send this signed form to:

John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

California Environmental Protection Agency

NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region
Issuance of Administrative Civil Liability (ACL) Order
With Mandatory Minimum Penalties against
Gaslamp Phase One LLC**

On November 18, 2004, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2004-0425 to Gaslamp Phase One LLC in the amount of \$3,000 for an alleged violation of Regional Board Order No.2000-90, NPDES No. CAG919001, *General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. Gaslamp Phase One LLC has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$3,000 as set forth in the Complaint. The Regional Board will consider accepting Gaslamp Phase One LLC's waiver at its February 9, 2005 meeting.

Written comments regarding the allegation contained in Complaint No. R9-2004-0425, and/or acceptance of the waiver will be accepted through Tuesday, January 18, 2005.

The Regional Board's February 9, 2005 meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please call Frank Melbourn at (858) 467-2973 or visit the Regional Board's web site at www.swrcb.ca.gov/rwqcb9

John H. Robertus
EXECUTIVE OFFICER